

1 (Whereupon, the following
2 proceedings were not of a
3 confidential nature and were
4 had in open court.)

5 JUDGE GILBERT: Back in the public record.

6 BY MS. SODERNA:

7 Q And I'm going to speak as generally as
8 possible and not refer to specific points and
9 specific allegations. But, generally, it's your
10 understanding -- is it your understanding that
11 different types of allegations when found valid by
12 the Company result in some point value that is
13 leveraged against that particular sales contractor?

14 A Yes.

15 Q And when a certain number of points are
16 accumulated by any particular sales contractor,
17 certain consequences result from that?

18 A Yes.

19 Q Is it your responsibility to implement any
20 consequences that result from an accumulation of
21 points?

22 A As directed by head office.

1 Q So is the answer "yes"?

2 A Yes.

3 Q And that would mean you would be

4 responsible for the so-called clawback of commissions

5 in whatever amount is deemed appropriate; is that

6 right?

7 A No. No.

8 Q That would be Corporate?

9 A Yes.

10 Q Would that be CCR that does that?

11 A Yes, I believe so.

12 Q So what type of consequences do you levy

13 against sales contractors?

14 A Me personally?

15 Q Right.

16 A I don't.

17 Q I'm sorry. I misunderstood your answer

18 then. I thought I asked if you are responsible for

19 implementing consequences on sales agents who

20 accumulate some number of points.

21 A As directed by the letter that they give

22 me.

1 Q Okay. So maybe you can help me out here by
2 giving me an example if it doesn't tread on anything
3 confidential.

4 A If I get a letter such as this and they
5 tell me that the independent contractor has
6 accumulated a point or whatever it is for whatever
7 violation, I have to have a discussion with that
8 individual.

9 Q Okay.

10 A At the end of it if -- even if it came down
11 to their agreement being, you know, taken away from
12 them, their independent contractor agreement, I would
13 notify them with CCR.

14 Q And what do you mean by "with CCR"?

15 A Conference call.

16 Q And if additional coaching or in-field
17 training was deemed to be appropriate, you would
18 participate in those remedial efforts?

19 A Yes.

20 Q Did you review Miss Alexander's surrebuttal
21 testimony in this proceeding?

22 A No.

1 Q Okay. You testify at Page 7 that if a
2 non-Spanish-speaking contractor meets up with a
3 Spanish-only-speaking prospective customer, they
4 forward that information to a Spanish-speaking
5 contractor who can then go to that home.

6 Is that your understanding that this
7 is the applicable Corporate policy?

8 A It's what we've told them to do, yes.

9 Q And when say "we've told them to do," you
10 mean we as the distributor or we as the Company?

11 A Yes, we as the distributor, myself and the
12 Company.

13 Q Okay. So it's your understanding that
14 that's the Corporate policy regarding
15 Spanish-speaking customers?

16 A I don't know what the Corporate policy is
17 specifically for that. I just know that that's
18 what we -- we like to have the English-speaking
19 representatives do.

20 Q I'm sorry. Could you repeat that last --

21 MS. SODERNA: Could I have that read back, the
22 answer, please.

1 (Whereupon, the record was read
2 as requested.)
3 BY MS. SODERNA:
4 Q Isn't it true that training sessions are
5 only provided in English?
6 A Yes.
7 Q So there is no directive from Corporate
8 that you require Spanish-speaking contractors to
9 address Spanish-speaking customers, that's just a
10 policy you've implemented at your office; is that
11 fair?
12 A Not sure of the question.
13 Q You said you didn't know if there was a
14 Corporate policy regarding Spanish-speaking
15 customers.
16 A Yeah, I don't know specifically what it is.
17 Q So that's just -- what you expressed that
18 you do in your office is just your own approach --
19 A Yes.
20 Q -- to Spanish-speaking customers?
21 A Yes.
22 Q And do you know if in every instance

1 there's a Spanish-speaking customer that customer
2 would be addressed by a Spanish-speaking sales agent?

3 A I don't think in every instance.

4 Q And how would you know if it was or wasn't?

5 A I wouldn't.

6 Q I'm going to talk about some other issues.
7 You testified in your direct testimony at 2 and 3
8 that within your Chicago office on Wacker Drive there
9 are written training materials that -- like
10 instruction manuals, do not solicit lists and other
11 written documents provided by the head office; is
12 that right?

13 A Yes.

14 Q And you use these materials to teach the
15 contractors how to sell your products; is that right?

16 A Yes.

17 Q So as the operator or manager of your
18 Chicago office, you are aware of the materials
19 located within that office; is that true?

20 A Yes.

21 Q And are you familiar with the visit from
22 Mr. Paul Goddard at your Chicago Wacker Drive office

1 in February 2008?

2 A Yes.

3 Q And during this office visit several
4 documents were discovered that were unapproved; is
5 that true?

6 A That, I'm not aware of.

7 Q You weren't told whether documents were
8 found that were unapproved?

9 A I was not told.

10 Q And so am I correct that there were no
11 consequences that resulted from Mr. Goddard's visit
12 with regard to his observations of your office?

13 A I don't -- again, consequences, I don't
14 understand.

15 MS. SODERNA: I'll withdraw the question.

16 BY MS. SODERNA:

17 Q With regard to training materials in your
18 office, is it your understanding that there are no
19 Corporate applicable retention or destruction
20 policies regarding those materials? Would you agree
21 with that?

22 A Repeat the question, please.

1 Q Regarding the training materials that you
2 have in your office, you would agree that there's no
3 Corporate policy regarding the destruction or
4 retention of those documents?

5 A No Corporate policy regarding the
6 destruction or -- whether we destroy them or we keep
7 them, is that what you're saying?

8 Q Right.

9 A My understanding is there's dates at the
10 bottom of them.

11 Q Okay.

12 A I mean, in terms of --

13 Q And that would mean that -- I'm sorry.
14 What does that mean?

15 A Anything given to us by head office, right,
16 just have to have their -- their, you know, stamp on
17 it or approval on it --

18 Q Okay.

19 A -- and it's dated.

20 Q So the materials that you use in your
21 office, you're confident that those came from
22 Corporate and those are the only materials that are

1 allowed to be in your sales office; is that true?

2 A Yes.

3 Q And you're confident that that policy that

4 you just discussed is followed in your office?

5 A In my office, yes.

6 Q Okay. You testify at Page 9 that

7 predictability of natural gas costs is more important

8 to some people than to others, but there is no

9 question that it is a benefit. Is that what you

10 testified to?

11 A I believe so, yes.

12 Q When asked in discovery to support this

13 contention, the Company responded that the basis for

14 your statement was your experience. Would you agree

15 with that?

16 A I don't know what their response was.

17 Q Would you agree that that statement was

18 based on your experience?

19 A Again, I don't know what their response

20 was. So...

21 Q No, I'm not asking you what the response

22 was. I'm asking if you would agree that the

1 statement that you made in testimony at Page 9
2 regarding your opinion of consumers' interests in
3 your product, whether that's based solely on your
4 experience. Is that what it is?

5 A In my experience, yes, that would be fair.

6 Q But you've not conducted any studies
7 analyses or surveys of customers' needs or wants
8 regarding the cost of their natural gas service;
9 correct?

10 A I have a question.

11 MR. McMANAMAN: Do you understand the question?

12 THE WITNESS: Studies or surveys or anything
13 like that? I mean, I sit with my customers and talk
14 to them about their needs and wants.

15 BY MS. SODERNA:

16 Q So it's basically an informal --

17 A Yes.

18 Q -- experiential direct one-on-one kind of
19 experience that you're referring to, no kind of
20 formal, you know, document that you've referred to to
21 substantiate that statement?

22 A I might have them refer to the utility

1 Website to see the volatility.

2 Q No, I was asking about -- your statement
3 was based on your interactions with customers; is
4 that fair to say?

5 A Yes.

6 Q Are you familiar with the budget plans of
7 Peoples Gas, North Shore Gas and Nicor Gas?

8 A Somewhat.

9 Q Is it your general understanding that those
10 plans allow customers to pay the same price for gas
11 every month and it's based on that customer's
12 historic gas usage and the projected price of gas?

13 A You'd have to describe the -- what you mean
14 by "the price."

15 Q Okay. The projected -- in this case, it
16 would be the purchased gas adjustment costs for the
17 particular utility, most likely. Are you familiar
18 with that --

19 A Are you referring to the therm cost?

20 Q Sorry. Let's first establish --
21 Are you familiar with the term
22 "purchased gas adjustment"?

1 A No.

2 Q So right. The utilities' per therm charge
3 that it passes to its customers. Right.

4 It's your understanding then that
5 these budget plans offered by the utilities allow
6 customers to pay the same price every month based on
7 historic usage and what they project their price of
8 gas to be; is that right?

9 A Yes.

10 Q So it's possible, wouldn't it be, for
11 customers to achieve price stability in that way
12 without paying any premium?

13 A It's possible assuming that therm prices
14 don't change.

15 Q Okay. And if a customer, for example, were
16 to finish the full term of their contract with U.S.
17 Energy and they would -- this is a hypothetical.
18 Okay -- and they would have ended up paying more than
19 they would have otherwise paid to the utility, you
20 would still consider that product as having offered
21 that customer an economic benefit; is that your
22 position?

1 A Probably not all customers; but to some I
2 believe that, yes.

3 Q Well, in my question I'm referring to a --
4 one specific hypothetical customer, not customers in
5 general.

6 So with regard to that one specific
7 hypothetical customer that's completed their contract
8 with U.S. Energy and ended up paying more than they
9 would have otherwise paid to the utility, would you
10 agree that there's no economic benefit for that
11 customer?

12 A I think hypothetically we have to look at
13 the economic situation of that customer, residential
14 versus business.

15 Q And what impact would that make?

16 A I don't know. Hypothetically I'm not sure
17 what -- if we're talking about the same customer. I
18 just believe that there are economic benefits for
19 everybody.

20 Q So you believe the economic benefit is a
21 result of the price stability; is that fair to say?

22 A Price stability, protection against

1 volatility.

2 Q And you believe the economic benefit is
3 derived from that customer's ability to appropriately
4 budget their utilities expenses. Is that where you
5 believe it comes from?

6 A Yes. Yes.

7 Q And if they so happen to pay more, that's
8 still an economic benefit to them because they knew
9 how much they were going to pay. Is that your
10 position?

11 A I'm not trying to compare budget plans, but
12 I know on ours they can expect to pay -- if usage and
13 therm price stays the same, they can expect to pay
14 the same every month. So I believe that is an
15 economic --

16 Q But my question went to whether that was an
17 economic benefit?

18 A I believe that's an economic benefit to
19 know what you're going to pay every month.

20 Q And you wouldn't call that more of a
21 psychological benefit that the person believes that
22 they're more confident that they can pay their bill

1 that -- that's more a psychological benefit rather
2 than economic benefit?

3 A I wouldn't agree with that.

4 Q Okay. Do you know whether or how many of
5 U.S. Energy's 100,000 customers in Illinois who have
6 completed their contract have saved money as compared
7 to what they would have paid to the utility?

8 A I do not.

9 MS. SODERNA: That's all I have.

10 JUDGE GILBERT: Staff.

11 While you're thinking about -- my game
12 plan is this: Have Staff cross. I have some
13 questions for the witness and then we'll break and
14 during the break you can prepare your redirect. And,
15 obviously, using my questions as well as the
16 questions of Staff and CUB as establishing the
17 parameters of your cross-examination because I want
18 to keep things within the scope and obviously
19 anything be crossed would have to be within the scope
20 of their redirect.

21 But anyway, in terms of time, my game
22 plan is Staff goes, I go and then we break.

1 MS. NAUGHTON: I just have a couple of quick
2 clarifications.

3 CROSS-EXAMINATION

4 BY

5 MS. NAUGHTON:

6 Q In your testimony and in your answers today
7 you referred perhaps colloquially as your duties
8 including managing. I assume what you mean by that,
9 though, is -- are the duties that are outlined in
10 your service agreement, which don't actually use that
11 term "managing"; is that correct?

12 A That would be correct.

13 Q When you were testifying earlier about how
14 you received directives from CCR Group regarding the
15 investigations they've conducted in connection with
16 their independent contractors, does that -- do you
17 ever report to them instances of breaches of company
18 policy?

19 A Yes.

20 Q You do?

21 So you understand company policy
22 enough to report breaches to the CCR Group?

1 A I think I do.

2 Q So when you were answering Miss Soderna's
3 questions about not understanding that --

4 A I believe it was in -- not understanding it
5 from what the document was presented to me.

6 Q Is it the term "material" that you don't
7 understand?

8 A Again, I believe we were just referring to
9 that particular document. And I said I don't know
10 how points were even arrived at. Not by the IC. I
11 don't know how that office determined what value
12 points had.

13 Q Okay. So you don't understand --

14 A If you're asking me about policies in terms
15 of wrongdoing --

16 Q Yeah. I am asking you company policies.

17 A Yeah, I'm aware of the wrongdoing policies,
18 if that's what you're referring to.

19 Q So that's embodied in the Code of
20 Compliance?

21 A Mm-hmm.

22 Q So you say you're familiar with that?

1 A Yes.

2 Q So with respect to company policies, you
3 are referring to the Code of Compliance --

4 A Correct.

5 Q And you -- okay.

6 And so you're familiar with that?

7 A Yes.

8 MS. NAUGHTON: I think that's all I have.
9 Thank you.

10 THE WITNESS: You're welcome.

11 JUDGE GILBERT: Okay. I have some.

12 EXAMINATION

13 BY

14 JUDGE GILBERT:

15 Q To begin with, I think it takes us back to
16 my earlier comments when you introduced yourself as
17 an employee of Just Energy.

18 Well, first of all, do you have a copy
19 of your testimony in front of you there, which you
20 should?

21 A No, your Honor.

22 Q You're certainly entitled to have that.

1 MR. McMANAMAN: I'll fix that right now, your
2 Honor.

3 BY JUDGE GILBERT:

4 Q And then I can just refer you to things
5 rather than reading them to you and that will
6 hopefully move us along.

7 I'm looking at Page 1 and Lines 3 and
8 4 there right in the beginning where you identify
9 yourself as a distributor for Energy Savings
10 Marketing Corp., or ESMC. My understanding is that
11 the corporate entity Just Energy has replaced U.S.
12 Energy -- well, I should say, has replaced Illinois
13 Energy Savings Corp., doing business as U.S. Energy
14 Savings Corp. But that none of those corporate
15 entities, either Just Energy or the Illinois or U.S.
16 Energy Savings Corporations, are, in fact, the same
17 corporate entities as ESMC; is that not correct?

18 A May I answer the question in terms of I
19 don't know how that structure works within Illinois
20 versus from the head office license. I don't --
21 where the names come from, I -- all I know is that
22 it's Illinois Energy Savings doing business as U.S.

1 Energy Savings and now we're doing business as Just
2 Energy.

3 Q And you can -- as a general proposition
4 answer every question as best as you can in terms
5 of --

6 A Yes, sir.

7 Q -- with reference to what you actually
8 know. So that's fine.

9 A Yes, sir.

10 Q But why did you say then on Line 4 that you
11 are an employee of ESMC rather than any of the other
12 corporate entities I've mentioned?

13 A At the time of this -- of the
14 statement that I gave, I was a distributor for Energy
15 Savings Marketing Corporation, at least that's what I
16 believe the top of my agreement says, the agreement
17 that I've signed with head office.

18 Q Okay. And were you, in fact, or are you,
19 in fact -- no, I guess I have to put this in past
20 tense. Were you at the time you signed that
21 agreement in your judgment an employee of ESMC or
22 someone contracting with ESMC?

1 A Contracting with them, sir.

2 Q And have you ever considered yourself an
3 employee of ESMC?

4 A No.

5 Q And do you consider yourself now an
6 employee of Just Energy?

7 A No.

8 Q Do you have your own corporate entity?

9 A I do.

10 Q Could you tell me what that's called.

11 A Therma, T-h-e-r-m-a, Inc.

12 Q And as of now is your contractual
13 relationship with any of the Energy Savings Group
14 Companies in your name individually or is it a
15 relationship involving Therma, Inc.?

16 A Can I say both. I get paid under my
17 corporate identity.

18 Q All right. And so look down the page just
19 a little bit there to Lines 8 and 9. And this is
20 going be a similar question. When you talk about
21 what -- at the time of your testimony was the past
22 four and one-half years that you had been with USESC,

1 is what you meant that you had a contractual
2 relationship with that entity rather than being an
3 employee of that entity?

4 A Yes. Correct.

5 Q All right. I notice Mr. Nicholson in his
6 testimony -- or attached to his testimony is a copy
7 of his contractual relationship with parts of the
8 Energy Savings Group. I notice you didn't also
9 attached your contract. There is a written contract
10 and you have that?

11 A I have it at my house, yes.

12 Q Take a look at Page 6, and I'm looking
13 right up at the top there, Lines 114 through 116, if
14 you want to take a moment to familiarize yourself.

15 A Yes.

16 Q And I think Miss Soderna asked you some
17 questions about this, about crew coordinator. How
18 does one become a crew coordinator?

19 A There's various things that I look at. I
20 determine who is training people in the field. They
21 have, in my opinion, a unique ability to manage
22 people and teach people. It's not anything -- my --

1 again, the way I run my office it's not because they
2 are producing higher numbers or anything like that.
3 It's just they have a good ability to talk to people
4 and teach them.

5 Q Okay. And so you make that designation?

6 A Yes, I do.

7 Q And is there any compensation for being a
8 crew coordinator that's solely because they're
9 coordinating crews?

10 A Yes, your Honor. They get an additional
11 commission from head office for that status.

12 Q "Additional commission" meaning their
13 compensation is tied to sales?

14 A Their compensation is tied to how their
15 individual team produces who they've been assigned to
16 train.

17 Q Okay. In your office now, for example, how
18 many crew coordinators do you have?

19 A Four.

20 Q And do they all have approximately the same
21 number of contractors under them?

22 A No, some of them really don't have the

1 ability to manage over ten people, and I realize
2 that. So I don't have them with any more people than
3 I feel that they can -- that we feel together that
4 they can handle.

5 Q And does each one have ten approximately
6 or --

7 A It's a fair number.

8 Q Okay. Give me a flavor of what happens in
9 the morning. Does everyone first report to your
10 office or can they just go right to the field and
11 start working?

12 A Meetings aren't mandatory, although they do
13 like to show up to start the day just to get
14 organized, an organizational feeling, I believe. But
15 they don't have to.

16 Q Okay. When a contractor starts his or her
17 day, do they need to contact their crew coordinator
18 before they reach the field?

19 A They don't have to. We'd like them to.

20 Q Do they tend to do it?

21 A Yes.

22 Q And then at what point do you begin to talk

1 to your crew coordinators?

2 A Every day.

3 Q Is it at the start of the day?

4 A Yes, usually at the beginning of the day

5 before I have the general meeting with everybody.

6 Q What time do you get to the office?

7 A 8:45.

8 Q And what time do you leave the office

9 typically?

10 A 4:30 to 5:00 o'clock.

11 Q And your contractors can work at any time

12 during the day?

13 A As long as the call center is open. The

14 typical hours are 8:00 a.m. to 9:00 p.m.

15 Q Okay. And the crew coordinators, when do

16 they work? What hours do they tend to work?

17 A Again, it depends on their special

18 interests. We have contractors that like to work

19 with businesses so they'll start their day early

20 hoping to talk to business owners. From a

21 residential standpoint, the majority of the crew is

22 out of the office late morning, early afternoon and

1 in the field by 1:00 p.m.

2 Q You sold automobiles for a long time?

3 A Yes, your Honor.

4 Q For U.S. Energy you're performing and

5 managing door-to-door sales; correct?

6 A Yes.

7 Q Are these cold calls?

8 A Yes.

9 Q Are they entirely cold calls?

10 A Not all.

11 Q When is there not a cold call?

12 A Some initial cold calls could lead to

13 appointment setting later, referral-type business.

14 Q Okay. Just as I think about it, if you're

15 selling automobiles, you have customers coming to

16 you?

17 A Yes.

18 Q If you're selling door to door, obviously

19 you're going to the customer?

20 A Yes.

21 Q In your experience, what are some of the

22 significant differences in that?

1 A I think customers are initially -- well,
2 differences? We're coming to them. It's a space
3 that you always have to maintain between, you know,
4 you and the customer. It's -- they're guarded maybe
5 a little more than, say, from the auto industry.
6 Although in that industry they were guarded as well,
7 but maybe a little more so.

8 Q Is that part of your training about how to
9 make the customer comfortable?

10 A Yes, absolutely. We don't like people
11 going into the homes. We like to make sure that we
12 have a certain space that we like to maintain with
13 customers as to not intrude on that. Trying to
14 clearly display a sense of professionalism at all
15 times. Smiling -- you know, just things that -- we
16 know we're encroaching on their private space so we
17 just want to keep it as friendly as possible.

18 Q Can your contractors go into the residence
19 if invited?

20 A If invited; however, I don't recommend it.

21 Q So if they're out on a cold day, they're
22 still going to stay out on the porch and...?

1 A Yes, your Honor.

2 Q Okay. All right. If you take a look at
3 Page 7, and, again, if you take a look at your answer
4 up at the top of the page from 136 down to 140.

5 A Okay.

6 Q All right. And I want to ask you about
7 this process by which the contractor can ask a
8 customer service rep to present the sale in Spanish
9 when the contractor presumably does not speak Spanish
10 or doesn't speak Spanish well enough to present the
11 sale himself or herself; correct?

12 A Right.

13 Q Who is the customer service representative?
14 Is that somebody that's reached by telephone?

15 A Third-party call center where information
16 is exchanged to wrap up the agreement, I guess, would
17 be a...

18 Q Okay. And whose call center is that, do
19 you know?

20 A In this instance it would have been -- I
21 mean, we're specifically talking about this period of
22 time?

1 Q Well, yeah, I mean --

2 A Because it's different today than it was

3 back then.

4 Q Well, tell me about both then.

5 A It would have been a telephone number

6 through a call center in -- associated with that

7 office.

8 Q Meaning associated with what company?

9 A Energy Savings Marketing Corporation.

10 Q And not one of the Ontario companies?

11 A Again, yes, Canadian, Ontario company, I'm

12 sure.

13 Q And that presumably would be a

14 Spanish-speaking person?

15 A Yes, if needed.

16 Q Well, let's just set this up practically.

17 The contractor, let's say, has a cell phone?

18 A I don't recommend using that. We try to

19 use the customer's home telephone.

20 Q And so the customer is going to call the

21 customer service representative, or how does that

22 work?

1 A The customer's instructed to get their
2 telephone and then we dial an 800 number that
3 connects us to the verification -- the CSRs, customer
4 service representatives, where they conduct the
5 verification.

6 Q Oh, so that's the verification, not the
7 sale?

8 A That's verification of the sale.

9 Q Okay.

10 A So the customer understands exactly what
11 they're...

12 Q All right. So at the point when the
13 contractor involves the customer service rep by
14 phone, the contractor presumably has already received
15 a positive response from the customer, have they not?

16 A Yes, the document's already been signed.

17 Q And that may be even though the contractor
18 does not speak Spanish?

19 A Correct.

20 Q And you said this process changed and that
21 at one time you're calling --

22 A May I clarify that last answer?

1 Q Go ahead.

2 A The customer would have spoken enough
3 English and maybe with an English-speaking
4 representative but felt more comfortable reviewing
5 that on the call in Spanish.

6 MR. McMANAMAN: Judge, I'm sorry. I think the
7 witness is confused between your questions about what
8 happens when a contractor encounters --
9 an English-speaking contractor encounters a
10 Spanish-speaking customer and then the part of the
11 process -- part of the sales process is the
12 verification call because both require a call to go
13 out. I think that -- seems that there's some
14 confusion.

15 BY JUDGE GILBERT:

16 Q So when he says -- when you say at Line 138
17 going on to 139, The company also has a process by
18 which the contractor can ask a customer service rep
19 to present the sale in Spanish...

20 A May I add, if it's presented in Spanish,
21 the customer's not supposed to sign the agreement.
22 They have to hear it again and then sign.

1 Q Wait. If what is presented in Spanish?

2 A The presentation. If it's in English to --

3 English-speaking representative to a -- presumably a

4 Hispanic customer, we don't want them to sign the

5 agreement until they hear it in their preferred

6 language.

7 Q Okay. But as you contend here, Line 138

8 through 140, the sale may already be complete or, in

9 fact, will be complete before the contractor contacts

10 the customer service representative using the

11 customer's telephone.

12 A Are we talking -- for clarification, we're

13 talking English to English or English to Spanish?

14 Q English to a Spanish.

15 A English to Spanish, the independent

16 contractor is at that point assuming that everything

17 is in order, the customer's in agreement with

18 everything so far, and now we proceed to having it

19 verified over the phone. Then the customer signs and

20 the sale is complete.

21 Q What does the customer sign at that point?

22 A Would sign the agreement.

1 Q Okay. So it's a little bit of a change now
2 because before you side the agreement was already
3 signed before --

4 A By that I meant English to English.

5 Q Okay.

6 A English to Spanish, we want to make sure
7 the customer fully understands in both languages.

8 Q And if it's English to Spanish, what -- in
9 what language is the contract that the
10 English-speaking contractor is presenting?

11 A English. If we are speaking with a
12 Spanish-speaking individual, my instructions are if
13 they don't understand anything you are saying, you
14 need to get a Spanish-speaking representative there.

15 Q You mean live?

16 A Yes.

17 Q Okay. So that's a different situation.
18 That's a situation you're referring to from Lines 136
19 through 138, is it not?

20 A Yes, your Honor.

21 Q And how does that occur? With an
22 English-speaking contractor, Spanish-speaking

1 customer, how does the English-speaking contractor
2 hand the sale off or hand the offer off to the
3 Spanish-speaking contractor?

4 A Possibly taking an address down in the
5 meeting the next day, telling a Spanish-speaking
6 contractor, Hey, you know, I ran into a
7 Spanish-speaking individual that didn't understand
8 what I was trying to say, why don't you go.

9 Q Okay. Is that a matter of judgment by an
10 English-speaking contractor as to whether they refer
11 that to a Spanish-speaking contractor?

12 A Yes.

13 Q Would the Spanish-speaking -- no -- don't
14 mean to say that.

15 Would the English-speaking contractor
16 have already assessed whether or not the customer is
17 a likely sale or not?

18 A I think it would have mattered on their
19 ability to understand if they were communicating
20 well. I don't think that outside of -- if they
21 believed that this customer's understanding what
22 they're trying to offer them, that would be it there.

1 Q Meaning they would not seek out a
2 Spanish-speaking --

3 A No, we're not seeking out Spanish-speaking
4 customers as an English representative.

5 Q No. No, that's not what I was going to
6 say. Well, let's forget what I was going to say.

7 If I'm a Spanish-speaking contractor
8 and one of my English-speaking colleagues comes to me
9 and says, I spoke to someone yesterday, they would be
10 more comfortable in Spanish, would I not, as a
11 Spanish-speaking contractor, say is this a likely
12 sale or are you just wasting my time?

13 A I don't even think we'd be able to
14 determine a likely sale yet. We wouldn't have --
15 because of the language barrier at that time, I don't
16 even think in the initial greeting when we were
17 talking to people we would probably understand right
18 away, there's no communication here. Let me jot down
19 an address, present that to a Spanish-speaking
20 representative and let them -- so there's no prior
21 indication that that would be a sale or not.

22 I think communication would be such

1 that we would just already determine, Hey, we're not
2 communicating here.

3 Q What happens with the commission if the
4 Spanish-speaking contractor makes a sale?

5 A It goes to the Spanish-speaking contractor.

6 Q Entirely?

7 A Yes.

8 Q So the English-speaking contractor who made
9 the referral gets nothing?

10 A Correct.

11 Q As long as we're on Page 7, take a look
12 down around Line 152 and 153.

13 A Okay.

14 Q And you said that you communicate with the
15 CEO. Do you know of which company you're referring
16 to?

17 A That would have been U.S. Marketing --
18 USMC.

19 Q And the CRR Department, which is part of
20 the Ontario Group, is it not?

21 A Yes.

22 Q And then in the following sentence when you

1 refer to, Head office staff, which head office are
2 you referring to?

3 A Ontario.

4 JUDGE GILBERT: Oh, you know what? I forgot to
5 do this. This should have -- that you forgot to do
6 as well, Ms. Soderna.

7 Are you offering any or all of your
8 cross exhibits for admission into the record?

9 MS. SODERNA: I am. I was going to wait until
10 all the redirect and cross was complete just in case
11 something else was required. But, yes, please, I'd
12 like to offer CUB Cross-Exhibits 1 through 4 into
13 evidence.

14 JUDGE GILBERT: Okay. Are there objections to
15 any or all of those?

16 MR. McMANAMAN: Judge, I don't have any
17 objections except for a note that on Cross-Exhibit 2,
18 which is the data responses, can we maybe just wait
19 until the end. I know Miss Soderna had indicated
20 that it could come up where other -- you know, this
21 is due to my formatting. So I recognize that at the
22 outset.

1 But not all of the DRs on these pages
2 were referenced by the witness. Maybe they will in
3 the future --

4 MS. SODERNA: Right.

5 MR. McMANAMAN: -- so maybe we can just reserve
6 that to the end. See how many of these are referred
7 to by any particular witness and then at the end of
8 the hearing with documents like this decide which
9 part of it should be admitted.

10 MS. SODERNA: That's fair. I was contemplating
11 that the record would reveal what portions of the
12 document are admitted. But -- and I don't know
13 offhand what other portions of that response I'll be
14 using, if any. So...

15 MR. McMANAMAN: Right. I'm happy to do it
16 whatever way.

17 MS. SODERNA: Me, too.

18 What are you comfortable with, Judge?

19 JUDGE GILBERT: That sounds perfect.

20 The only one of the four exhibits that
21 I have listed as confidential in my own notes so far
22 would be CUB Cross 4, is that correct, the Penalty

1 Matrix?

2 MS. SODERNA: The matrix.

3 MR. McMANAMAN: That's correct, your Honor.

4 JUDGE GILBERT: And the other three can be
5 public; is that correct?

6 MR. McMANAMAN: That's correct from our point
7 of view, your Honor.

8 JUDGE GILBERT: Okay. Then CUB Cross 1 is
9 admitted. CUB Cross 2 will have no decision right
10 now. CUB Cross 3 is admitted. And CUB Cross 4 is
11 admitted as a confidential exhibit.

12 (Whereupon, CUB Cross-Exhibit
13 Nos. 1, 3, 4C were admitted
14 into evidence.)

15 JUDGE GILBERT: Now that that's done I can go
16 back to Mr. Hames. And sorry for that interruption,
17 I should have done this before.

18 BY JUDGE GILBERT:

19 Q In any event, if you take a look at CUB
20 Cross 3, which is the -- what I'll call allegation
21 letter. Do you have a copy of that?

22 The Keith Dean that's mentioned in

1 this letter I assume is the same Keith Dean that's
2 mentioned on Page 2 of your testimony; is that
3 correct?

4 A That is correct.

5 Q The letter is addressed to both Mr. Dean
6 and yourself. I assume it's addressed to you because
7 you are a -- I'm sorry -- a distributor?

8 A Yes.

9 Q And it does -- the alleged violation that
10 this letter refers to is an alleged violation by
11 Mr. Dean?

12 A Yes.

13 Q And Mr. Dean only?

14 A Correct.

15 Q Now, I was a bit confused by the fact that
16 the point value that appears on CUB Cross 3 was zero
17 in relation to a disputed signature. Does that mean
18 that the violation has not yet been determined, or
19 that a violation has been determined but the point
20 value of that violation is zero?

21 A I wouldn't know that from looking at this,
22 your Honor.

1 Q When the head office -- when CCR determines
2 that a contractor has committed a violation, is this
3 the document they send you or is there some other
4 kind of document?

5 A This is the document.

6 Q So do you assume from the fact that this
7 document has been sent to you and to Mr. Dean that
8 the head office has already determined that a
9 violation did, in fact, occur?

10 A May have occurred and is under
11 investigation.

12 Q Now, I'm confused. Because my previous
13 question was to determine whether or not you received
14 this letter when a violation had already been
15 determined or --

16 A A customer -- I'm sorry, your Honor.

17 Q -- or whether an investigation is still in
18 progress. I thought you told me that this letter
19 tells you that a violation had already been
20 determined by CCR; is that not true?

21 A If I may clarify, when an allegation is
22 made, this e-mail letter is sent to me. I now know

1 that there's an investigation in process.

2 Q All right. And what kind of document do
3 you receive when the investigation's completed?

4 A It would be something similar to this.
5 Depending on the severity or legitimacy of the
6 allegations, points could be assessed.

7 Q All right. And if the head office or CCR
8 has investigated and has determined that a violation
9 occurred, how would this document look different?
10 What additional information would be on a document
11 like this?

12 A Maybe the resulting conversation with
13 the -- notes on the resulting conversation with the
14 customer and point values.

15 Q All right. And so since you say on Page 2
16 of your testimony that Keith Dean is a recruiter,
17 what is a recruiter? Is that also a crew
18 coordinator?

19 A No, sir.

20 Q It's a different role?

21 A Yes.

22 Q Okay. Is he compensated for being a

1 recruiter apart from sales commissions?

2 A Yes. He doesn't receive commission.

3 Q Oh, he's a salaried employee?

4 A Yes, your Honor.

5 Q But he is or was also a contractor in the

6 field, was he not?

7 A Originally, yes, sir.

8 Q Well, CUB Cross 3 is dated October 23,

9 2008, so he was apparently in the field -- well, it

10 doesn't say when he was in the field. But, anyway,

11 this document is October 23, 2008. Your testimony

12 was September 25, 2008, which would be a month before

13 CUB Cross 3.

14 So I'm kind of inferring -- and tell

15 me if I'm wrong -- that he was, in fact, doing both

16 things perhaps while being a recruiter and a

17 salesperson; would that be wrong?

18 A I believe that at the time if -- I can't

19 determine when the customer -- from this I can't

20 determine when the customer contacted head office in

21 terms of the allegation. The allegation date

22 according to the customer, I believe, would be June

1 of 2008 next to the appoint value.

2 Q Oh, right. Right. Right. Yes.

3 Okay. So --

4 A That's the allegation date. Whether the --
5 I can't determine when this customer was even
6 initially contacted by Mr. Dean in the field.

7 Q Okay. So sometime between June 9, 2008,
8 which is the allegation date on CUB Cross 3 and
9 September 25, 2008, when you filed your direct
10 testimony, Mr. Dean became your recruiter?

11 A Yes, your Honor.

12 Q Would this allegation not perhaps be
13 counted against him when you make him your recruiter?

14 A I would have had to have discussed it with
15 him, but I don't know -- discussing the allegation.
16 Again, I don't know the outcome of the allegation.

17 Q Okay. Fair enough.

18 There are some designations on the
19 document, CUB Cross 3, that I don't necessarily
20 understand. I'm going to look at the -- first
21 sentence under Allegation Type. I'm sorry. I should
22 say the first sentence of the narrative under

1 Allegation Type. It says, Spoke to the AH. What's
2 an AH?

3 A I'll say account holder.

4 Q And then in the next sentence that begins
5 with "CX." What's CX?

6 A Customer service representative or the
7 individual who was -- I apologize, your Honor. I
8 believe that that would represent the customer also
9 indicates that the account is not in her name, the
10 customer.

11 Q Okay. So the AH and CX in this narrative
12 are probably referring to the same person, you think?

13 A Yes, your Honor.

14 Q If you have a contractor that you feel is
15 kind of a bad actor, are you able to do anything on
16 the spot? In other words, can you say, for example,
17 You're fired, or I don't want you going on the street
18 representing this company anymore? Can you do those
19 things?

20 A No, your Honor.

21 Q So what do you do if you feel you have that
22 bad actor, that hypothetical bad actor?

1 A I need to get head office involved, CCR
2 involved.

3 Q Can you chew them out? I mean, can you --
4 have you ever done that?

5 A Yes.

6 Q Can you require them to be retrained or
7 coached?

8 A I would then contact CCR and say, This is
9 what I would like to do, do you agree? Would you --
10 you know, Can we see eye to eye on that, and let's
11 have them retrained, if I think there's some saving
12 value there.

13 JUDGE GILBERT: All right. I'm done.

14 Does anyone have the time? Go off the
15 record.

16 (Whereupon, a discussion was had
17 off the record.)

18 JUDGE GILBERT: We'll go back on for redirect.

19 Ready to go?

20 MR. McMANAMAN: Yes. Thanks, your Honor.

21

22

1 REDIRECT EXAMINATION

2 BY

3 MR. McMANAMAN:

4 Q Mr. Hames, I just want to go over a few of
5 the things that you talked about earlier. You were
6 asked about the corporate structure of the Energy
7 Savings Companies, do you remember that?

8 A Yes.

9 Q You're not familiar with the cooperate
10 hierarchy and the different affiliations between
11 those corporations, are you?

12 A No.

13 Q But you referred to the head office, do you
14 remember that?

15 A Mm-hmm.

16 Q And when you say "head office," you know,
17 what office are you referring to? Where is it
18 located?

19 A In Ontario.

20 Q Ontario, Canada?

21 A Yes.

22 Q And do you know which particular company

1 within the corporate structure correlates to that
2 head office located in Ontario, Canada?

3 A I do not.

4 Q You were also asked questions about the
5 background checks for sales contractors, do you
6 remember that?

7 A Yes.

8 Q You don't perform the background checks for
9 sales contractors; is that correct?

10 A I do not.

11 Q But your office has some participation; is
12 that right?

13 A Yes.

14 Q Can you explain for me what the -- you
15 know, what your participation is.

16 A The potential contractors sign an
17 authorization to have another company conduct a
18 background check.

19 Q And does your office also collect any
20 information -- personal information from the
21 contractor?

22 A Yes.

1 Q And then what do you do once you have the
2 authorization and the personal information?

3 A Forward all of that to head office.

4 Q And then is it your understanding that the
5 head office arranges for the background check to be
6 conducted?

7 A Yes. Yes.

8 Q Do you still have a copy of the exhibits
9 that you were shown today?

10 A Yes, I do.

11 Q Can you refer to CUB Cross-Exhibit No. 1,
12 please. Now, you were asked some questions about
13 this. This refers to the areas in which the
14 contractors market?

15 A Yes.

16 Q Do you remember that?

17 A Yes.

18 Q And I just wanted to clarify for the record
19 because my notes indicated that you were asked, Do
20 these areas that are listed on the first page
21 indicate where the contractors will market in the
22 following week? And what I wanted to clarify with

1 you is, do these areas or the -- yeah, the areas
2 listed in this document, do they indicate where the
3 contractors will definitely market the next week or
4 where they may market?

5 A Where they may market, where they could
6 market.

7 Q You were also asked questions about the CCR
8 database, do you remember that?

9 A Yes.

10 Q And you indicated that -- have you ever
11 worked with the CCR database?

12 A No, I didn't even know there was a
13 database.

14 Q Do you have access to the CCR database?

15 A No.

16 Q Do you understand that CCR has a database
17 that tracks and records information concerning
18 contractors?

19 A Yes.

20 Q You were also asked questions about the
21 situation when an English-speaking contractors
22 encounters a Spanish-speaking customer, do you

1 remember that?

2 A Yes.

3 Q And you said that you weren't -- do you

4 remember you were asked whether you knew what the

5 Corporate policy was on that issue?

6 A Yes.

7 Q And you correct me if I'm wrong, but your

8 answer was you weren't aware of the Corporate policy;

9 is that right?

10 A That's correct.

11 Q You also -- but you also said that -- and

12 you correct me if I'm wrong -- that your

13 understanding is that if an English contractor

14 encounters a Spanish-speaking customer, they're not

15 to attempt to make a sale; is that right?

16 A Yes. Today?

17 Q At any time.

18 A At any time. Would you repeat your

19 question so I can maybe clarify again, please.

20 Q Yes. If an English-speaking contractor

21 encounters a Spanish-speaking customer, you're not

22 aware of what the -- you said that you're not aware

1 of what the Corporate policy is?

2 A Correct.

3 Q But did you ever receive any direction from
4 the head office as to what's supposed to happen in
5 that situation?

6 A Yes. Yes.

7 Q And what was that direction?

8 A English-speaking representatives are to
9 call that verification and ask for a Spanish-speaking
10 customer service representative so they can in detail
11 go over the terms and conditions of the agreement.

12 Q Or they can also refer it to a peer?

13 A Yes.

14 Q With respect to documents that are at
15 the -- at a sales office like your Loop office, I
16 just wanted to make sure that I understood is that
17 you said that you're only supposed to have
18 Corporate-approved documents in the office; is that
19 right?

20 A That's correct.

21 Q But I think Counsel asked you whether there
22 was any retention policy with respect to documents.

1 Do you know what you're supposed to do with a sales
2 document or some other kind of document that you
3 received from the corporation if there's a
4 superseding document?

5 A Yes, if they give us something new, I have
6 to destroy the old one.

7 Q And is that a direction that you've
8 received from the head office?

9 A Yes.

10 Q Can I direct your attention to CUB
11 Cross-Exhibit 3.

12 A Yes.

13 Q That's the allegation letter concerning
14 Mr. Dean.

15 A Yes.

16 Q I think you were asked you didn't know --
17 or did you know what the outcome of this particular
18 allegation was?

19 A I did not.

20 Q Well, let me ask you this: Does Mr. Dean
21 still work at the Loop office?

22 A Yes, he does.

1 Q And he still works in the capacity of
2 recruiter?

3 A Yes, he does.

4 Q Would he be allowed to work in that
5 capacity if the outcome of this allegation was that
6 there was, in fact, a disputed signature -- or there
7 was, in fact, a forged signature?

8 A Absolutely not.

9 Q So is it fair to say then you do know what
10 the outcome of this allegation was?

11 A Yes.

12 Q And the outcome of this allegation was that
13 the allegation was not verified?

14 A Was not verified, correct.

15 Q And you were also asked about what you can
16 do if you have a sales contractor that you consider a
17 bad actor. And it's true that you don't have any
18 authority to fire a contractor; is that right?

19 A Correct.

20 Q Can you do anything short of, you know,
21 terminating their agreement to ensure that if you
22 consider them to be a bad actor that no further bad

1 actions take place?

2 A Yeah, I can sit them down and take their
3 badge away and say, Listen, we're not going any
4 further until we can talk to somebody from head
5 office.

6 Q Have you ever done that?

7 A Yes.

8 Q On how many occasions?

9 A I don't recall specifically.

10 Q Can you estimate? Is it more than once?

11 A Yes, of course.

12 Q More than five times?

13 A Probably not.

14 Q So a handful of times?

15 A Yeah, a handful of times.

16 Q Over what period of time?

17 A Four and a half, five years now.

18 Q And the last thing I wanted to just clarify
19 with you I think we had some confusion on was --
20 again, it has to do with the situation where we have
21 the English-speaking contractor and the
22 Spanish-speaking customer. And there were some

1 questions about a phone call that can be made from
2 that -- you know, from that encounter.

3 If the situation is that the -- and
4 you correct me if I'm wrong -- but one of the phone
5 calls that can be made and it's the one that -- you
6 know, I'll refer you to your testimony. I think it's
7 on Page 7.

8 A Yes.

9 Q The top of page 7.

10 A Yes.

11 Q And you see it was -- do you see Lines 138
12 through 140 --

13 A Yes.

14 Q -- the questions that the Judge was
15 asking -- or the sentence the Judge was asking you
16 about, is that a situation where if -- the process
17 you describe in that last sentence of that answer, if
18 that process is used, has a contract been formed or
19 has a sale been made at the time the call is made?

20 A No.

21 Q When is the contract formed or when is the
22 sale made in that situation?

1 A After that customer speaks with this
2 Spanish customer service representative.

3 Q And is it right that the Spanish
4 customer -- the Spanish-speaking customer service
5 representative then will make the sales presentation
6 by telephone in that situation?

7 A Correct. Correct.

8 Q If that situation happens, what language is
9 the written contract in?

10 A Spanish.

11 Q And it's not to be in English; is that
12 right?

13 A No. Correct.

14 Q And if there is a Spanish-speaking -- or if
15 there is a Spanish -- I'm sorry. Let me start over.

16 If the sales presentation in a
17 door-to-door situation is made in Spanish and a sale
18 is made, there will be a phone call as well; correct?

19 A Yes.

20 Q But that's a different type of phone call,
21 right, a verification phone call?

22 A Yes. Right. Correct.

1 Q That's a different type of phone call than
2 the phone call that you're referring to in Lines 138
3 to 140?

4 A That's correct.

5 Q If the sales presentation was made in
6 Spanish, are there any rules about what language
7 the -- that verification phone call must be in?

8 A In Spanish.

9 Q So there is a rule and it must be in
10 Spanish?

11 A Yes.

12 MR. McMANAMAN: Those are all the questions
13 that I have, your Honor.

14 JUDGE GILBERT: Any recross within the confines
15 of redirect?

16 MS. SODERNA: Yes.

17 RECROSS-EXAMINATION

18 BY

19 MS. SODERNA:

20 Q Mr. McManaman asked you about the CUB
21 Cross-Exhibit 1, which contains the areas in which
22 marketers -- sales agents will be marketing. And you

1 indicated that it's your belief that these areas are
2 where agents could market, not where they should
3 market. Is that your position?

4 A Yes.

5 Q And how do you know that?

6 A Because it's -- they're not confined to any
7 one area. We didn't --

8 Q But you don't --

9 A They, themselves, are not confined to any
10 one area.

11 Q And how -- I'm sorry. You said the crew
12 coordinators provide you with the information and the
13 crew coordinators are responsible for organizing
14 areas where to send sales contractors; is that
15 correct?

16 A Not to send them, to go with them on
17 occasion.

18 Q And when crew coordinators go with sales
19 agents, do they all travel together?

20 A We try.

21 Q In vans, for example?

22 A No.

1 Q How do they travel?

2 A Public transportation.

3 Q And so the crew coordinator travels with

4 the individual sales agents in his group together as

5 a unit to particular neighborhoods; is that right?

6 A Yeah. But, again, not all of them because

7 they don't have to go with their coordinator.

8 Q And so the areas identified in this

9 exhibit, are those areas that the crew coordinators

10 have indicated to you and to Corporate that they may

11 consider taking their group --

12 A That's correct.

13 Q -- is that right?

14 A That's correct.

15 Q With regard to the questions you were asked

16 regarding Spanish speaking -- sorry -- English

17 speaking sales agents to Spanish-speaking customers,

18 you indicated that is your -- the policy of your

19 office, your policy at your sales office that -- to

20 instruct sales contractors not -- English-speaking

21 contractors -- sorry -- not to confirm sales with

22 Spanish-speaking customers; is that correct?

1 A Yes.

2 Q And you indicated to the Judge that you
3 advised those English-speaking contractors to make
4 that referral to a Spanish-speaking contractor;
5 right?

6 A Yes.

7 Q And in that case they would lose that
8 commission; is that right?

9 A Yes.

10 Q You also indicated earlier in our
11 discussion that pursuant to your agreement with -- is
12 it Energy Savings Market Group -- that's the services
13 agreement that you have? That's the company with
14 which you have a service agreement?

15 A I believe so.

16 Q And your obligations under that agreement
17 are to follow the Code of Compliance; is that right?

18 A Correct.

19 Q Do you recall if the Code of Compliance
20 speaks to the issue of Spanish-speaking customers and
21 how they are to be handled?

22 A I don't recall.

1 Q Can I show you a document to refresh your
2 recollection, which is the Code of Conduct and
3 Compliance.

4 MS. SODERNA: And I'm sorry that I don't have
5 copies for a cross-exhibit. I would just like to see
6 if that jogs your memory.

7 MR. McMANAMAN: Can I see a copy of this?
8 Thanks.

9 BY MS. SODERNA:

10 Q Did that refresh your recollection
11 regarding the policy under the Code of Compliance for
12 Spanish-speaking customers?

13 A I believe this is in regard to actually
14 conducting the sale in terms of -- it doesn't say
15 anything about how we -- you know, English to Spanish
16 or anything. It's just the actual presentation
17 itself, what we need to be aware of.

18 Q Okay. Thank you.

19 And with regard to the -- I'll take
20 that back. Sorry, that's my only copy.

21 With regard to the destruction of
22 documents, the question you were asked about the

1 retention policy of documents in your office, you
2 indicated that you are expected to, by the Corporate
3 office, destroy old material when new material comes
4 in the office?

5 A That's correct.

6 Q Has that always been the policy?

7 A Yes.

8 Q So far as you've been -- as far as you've
9 been a distributor for the company; is that right?

10 A Correct.

11 Q Regarding the allegation -- questions
12 regarding the allegation letter that is CUB
13 Cross-Exhibit 3, you were asked -- or you answered
14 that if Mr. Dean had, in fact, been found -- if the
15 allegation regarding forgery had, in fact, been found
16 to be valid -- that's the Company's terminology;
17 right?

18 JUDGE GILBERT: I think they say "verified"; is
19 that correct?

20 MS. SODERNA: "Valid," I think is what they
21 use.

22 THE WITNESS: I think I may have used

1 "verified." But what I meant was "valid," you're
2 right.

3 MS. SODERNA: I didn't catch that part.

4 BY MS. SODERNA:

5 Q Is that fair to say?

6 A Yeah.

7 Q Had that allegation been found to be
8 verified, your understanding is that Mr. Dean would
9 have been terminated; is that right?

10 A Correct.

11 Q But you wouldn't, yourself, have terminated
12 him, that would have been CCR's department; is that
13 right?

14 A That's right.

15 Q And so, in fact, you do understand that a
16 forged signature, in any case if found to be valid,
17 the consequence is termination -- immediate
18 termination --

19 A Yes.

20 Q -- is that right?

21 A Yes.

22 Q Are there any other allegations for which

1 that is the immediate consequence, if found valid?

2 A Other than a forged contract?

3 Q Right.

4 A Immediate termination --

5 Q Right.

6 A -- was the question? FPRC call.

7 Q I'm sorry. What's that?

8 A The phone call that we make.

9 Q The verification call?

10 A The verification call, yeah.

11 Q And in what context?

12 A If they, you know, try to verify that they

13 are the customer when it's really not the customer.

14 Q Okay. So similar to forging a contract, if

15 they forged the person's identity verbally --

16 A Yes. Yes.

17 Q -- that would indicate immediate

18 termination?

19 A Correct.

20 MS. SODERNA: That's all I have.

21

22

1 FURTHER EXAMINATION

2 BY

3 JUDGE GILBERT:

4 Q Okay. Just briefly on the much-belabored
5 testimony on Page 7, Lines 138 to Lines 140. I want
6 to make sure now after your redirect that I do, in
7 fact, understand this.

8 English-speaking contractor,
9 Spanish-speaking customer, at some point in the
10 interaction the English-speaking contractor
11 determines that he needs or she needs the assistance
12 of a Spanish-speaking customer service
13 representative; correct?

14 A Yes.

15 Q All right. And that could be before a sale
16 has been consummated by the customer saying "yes"?

17 A Yes.

18 Q It could be?

19 A That is correct.

20 Q If in that situation the customer has not
21 yet said "yes" and the phone call is placed to the
22 customer service representative and the customer

1 service representative -- or as a result of the
2 conversation with the customer service representative
3 the Spanish-speaking customer then says "yes," who
4 gets the commission?

5 A The contractor standing at the door.

6 JUDGE GILBERT: Okay. I'm done.

7 MS. LIN: Judge, I have a few questions if
8 you --

9 JUDGE GILBERT: I'm so sorry I went over you.

10 MS. LIN: No, that's okay. But these are
11 actually in sort of -- as a result of questions that
12 you had posed to Mr. Hames on the first round before
13 he was redirected by the Company.

14 So I'm wondering if I -- if you would
15 allow me an opportunity to get some clarifying
16 answers from the witness regarding answers you had
17 elicited from --

18 JUDGE GILBERT: I'm pretty strict on this. If
19 it's not within the confines of what Mr. McManaman
20 did on redirect, no.

21 MS. LIN: That's fine.

22 JUDGE GILBERT: Fair enough.

1 Now, CUB Cross 2.

2 MS. SODERNA: I would like to request admission
3 of CUB Cross 2 to the extent it was discussed in the
4 cross-examination, which is in regards to, I believe,
5 2.17, 2.18, and I think it was 2.21, the Company's
6 responses in that document, if that is enough to
7 establish that in the record.

8 JUDGE GILBERT: I don't have a problem with
9 that. I can make a directive right now orally that
10 we'll identify what can be used as evidence and what
11 cannot.

12 Are you comfortable with that?

13 MR. McMANAMAN: That's fine with me, your
14 Honor.

15 JUDGE GILBERT: All right. The two-page
16 document entitled CUB Cross-Exhibit 2 will be
17 admitted, however, the only portions of that
18 cross-exhibit that may be used as evidence in this
19 case are the question and answers -- questions and
20 answers 2.17, 2.18 and 2.21. Any other material on
21 that two-page document may not be used as evidence in
22 the case.

1 (Whereupon, CUB Cross-Exhibit
2 No. 2 was admitted into
3 evidence.)
4 JUDGE GILBERT: So 1:35, if we can be back here
5 and ready to go.
6 Mr. Hames, you're excused. Thank you
7 for testimony and we'll start with Mr. Nicholson when
8 we get back.
9 (Whereupon, a recess was taken.)
10 JUDGE GILBERT: We're on the record.
11 Mr. Nicholson, let me swear you in.
12 (Witness sworn.)
13 WILLIAM NICHOLSON,
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:
16 DIRECT EXAMINATION
17 BY
18 MR. McMANAMAN:
19 Q Good afternoon, Mr. Nicholson.
20 A Good afternoon.
21 Q Can you please introduce yourself for the
22 record and spell your last name.

1 A William Nicholson, W-i-l-l-i-a-m
2 N-i-c-h-o-l-s-o-n.
3 Q Mr. Nicholson, whom do you work for?
4 A Just Energy.
5 Q Did you prepare testimony for this case?
6 A I did.
7 Q And how many pieces of testimony did you
8 prepare?
9 A A single piece.
10 Q And is it designated as IESC Exhibit 3.0?
11 A Correct.
12 Q And do you have exhibits attached to that
13 testimony?
14 A Yes.
15 Q And they're designated as Exhibits 3.1
16 through 3.4; is that correct?
17 A Yes.
18 Q And you're sponsoring those exhibits?
19 A Yes, I am.
20 Q Was the testimony that you prepared
21 prepared by you or under your direction?
22 A Yes, it was.

1 Q And if I ask you the questions that are in
2 your prepared testimony, would your answers be the
3 same as they are in the written testimony?

4 A Yes.

5 Q And to your knowledge, your testimonies
6 have been filed with the Commission Check; is that
7 correct?

8 A Yes, they have.

9 MR. McMANAMAN: Your Honor, I would --
10 BY MR. McMANAMAN:

11 Q And one other question I should ask you is,
12 there's been -- for your testimony there's been both
13 a confidential and a public version; is that correct?

14 A Correct.

15 MR. McMANAMAN: Your Honor, I would move to
16 enter the direct testimony of Mr. Nicholson and the
17 exhibits that he sponsors into evidence. And those
18 exhibits are Exhibit 3.- -- IESC Exhibit 3.0, 3.1,
19 3.2 and 3.3, and then there is also 3.0C and 3.4C
20 only, if that makes sense. And I have a copy right
21 here for your Honor.

22 JUDGE GILBERT: So 3.0, which is the testimony

1 itself, all of that's confidential?

2 MR. McMANAMAN: No, there's just a public
3 version and a C version.

4 JUDGE GILBERT: All right. That's what I
5 thought. Okay. Thank you.

6 MR. McMANAMAN: But then I believe it's only
7 3.4. That's the only exhibit that has --

8 MS. SODERNA: That remains confidential.

9 MR. McMANAMAN: -- that remains confidential.

10 MS. SODERNA: And what was that again? The
11 general description. I have it here -- oh, his
12 services agreement.

13 MR. McMANAMAN: That's right.

14 MS. SODERNA: That's fine.

15 MR. McMANAMAN: And here's a courtesy copy for
16 your Honor.

17 And 3.1 also has a C. There's also a
18 3.1C because a portion of that is confidential -- or
19 all of it is. All of it is, your Honor, 3.1. So
20 there's only a C version of 3.1.

21 JUDGE GILBERT: Okay. So I'll play it back to
22 make sure I have it. There's 3.0 and 3.0C, 3.1C,

1 3.2, 3.3 and 3.4C.

2 MR. McMANAMAN: That's correct.

3 JUDGE GILBERT: Any objection to the admission
4 of any or all of those?

5 MS. SODERNA: No objection.

6 MS. NAUGHTON: No objection.

7 JUDGE GILBERT: All of those exhibits are
8 admitted.

9 (Whereupon, IESC Exhibit
10 Nos. 3.0, 3.0C, 3.1C, 3.2, 3.3
11 and 3.4C were admitted into
12 evidence.)

13 JUDGE GILBERT: Who will begin cross?

14 MS. SODERNA: I will.

15 CROSS-EXAMINATION

16 BY

17 MS. SODERNA:

18 Q Good morning, Mr. Nicholson. My name is
19 Julie Soderna and I represent the Citizens Utility
20 Board. And the questions I'll be asking you today
21 will sound familiar because you were here for
22 Mr. Hames' testimony; is that right?

1 A Yes, I was.

2 Q The entirety of the time?

3 A Yes.

4 Q And you are, like Mr. Hames, also a
5 regional distributor for Energy Savings Marketing
6 Corporation; is that right?

7 A Yes.

8 Q And we'll use ESMC for short. Is that
9 okay?

10 And since all the testimony and
11 discovery in this proceeding uses either the name
12 Illinois Energy Savings Corp., or U.S. Energy Savings
13 Corp., to alleviate any confusion of my question
14 today, I will be referring to the Company -- to the
15 Company's Illinois affiliate as simply U.S. Energy or
16 "the Company." Are we in agreement on that?

17 A Yes.

18 Q And, like Mr. Hames, you do not report
19 directly to anyone within ESMC directly but, rather,
20 your duties and obligations to the Company are
21 governed by a services agreement with ESMC; is that
22 right?

1 A That's correct.

2 Q And your main responsibility out of the
3 service agreement is to operate the U.S. Energy's
4 Westmont office; is that right?

5 A That's correct.

6 Q Do you refer to Westmont or O'Hare
7 or what's the term you prefer?

8 A Westmont.

9 Q Westmont. Okay.

10 And you have about 20 years of
11 experience in various forms of sales; is that right?

12 A Yes, I do.

13 Q You handle day-to-day office issues at the
14 Westmont office and also provide recruitment hiring
15 and training of independent sales contractors; is
16 that true?

17 A Yes, I do.

18 Q And your position is not salaried, is it?

19 A No.

20 Q You're paid on commission entirely; is that
21 right?

22 A Yes.

1 Q And would you agree with me that over
2 98 percent of the Company's sales in Illinois are
3 based on door-to-door marketing?

4 A I am not privy to the exact stats.

5 Q Would it be fair to say that all the sales
6 that come out of your office are pursuant to
7 door-to-door marketing?

8 A No.

9 Q And what portion would you say are a result
10 of door-to-door marketing?

11 A I don't have an exact percentage, but there
12 are referrals. There are people who find us through
13 various methods, such a Website or inquiring about
14 different energy programs.

15 Q Would it be fair to say that a substantial
16 majority of the contacts -- of the contracts that are
17 signed from your office are a result of door-to-door
18 sales?

19 A I would agree.

20 Q And most of those contracts, say
21 90 percent, for example, are from residential
22 customers; would you agree with that or...?

1 A Again, I do not have the exact stats.

2 Q But a substantial amount of the contracts
3 relate to residential customers rather than
4 commercial; would you agree?

5 A There is -- yes.

6 Q And before you were promoted to
7 distributor, you were a sales contractor yourself; is
8 that right?

9 A Yes, I was.

10 Q And for purposes of my questions today, I'm
11 going to use the term "independent contractor,"
12 "sales contractor" and "sales agent,"
13 interchangeably. Are we in agreement on that?

14 A Yes.

15 Q For what period of time did you work as a
16 sales contractor?

17 A Approximately one and a quarter to about
18 one and a half years.

19 Q And that was during what time frame?

20 A That would have been from 2005 into 2006.

21 Q Do you have any ballpark estimate of how
22 many customers you signed up when you were a

1 contractor during that period?

2 A No, I do not.

3 Q Do you have any idea of the ballpark number
4 of total customers that were signed up by agents
5 under your direction from the Westmont office?

6 A No, I do not.

7 Q As a regional distributor, you were
8 responsible for recruitment and training of sales
9 agents, running sales meetings and other managerial
10 duties; is that accurate?

11 A Yes, it is.

12 Q And, like Mr. Hames, is it true that you
13 also find your contractors through advertisements in
14 local publications and applications are solicited
15 online also? Is that fair to say?

16 A Yes, they are.

17 Q And do you also conduct background checks
18 on potential employees -- or potential contractors in
19 your office?

20 A We collect the necessary information and
21 submit it to head office so they can process the
22 background check.

1 Q And as we discussed, part of your
2 responsibilities as regional distributor are
3 conducting training sessions for new sales agents;
4 right?

5 A Yes, it is.

6 Q And, in fact, you testified that the first
7 thing you do during a training session is write on
8 the board in large letters "ethics." Is that what
9 you testified to?

10 A Yes, I did. Yes, I do.

11 Q That is your practice in your sales
12 meetings?

13 A Yes.

14 Q And you feel very confident that agents are
15 trained to refrain from promising savings, don't you?

16 A Absolutely.

17 Q In fact, you testify that you quiz the
18 contractors on your presentation. But by "quiz" you
19 don't mean you submit an actual written test, do you?

20 A No.

21 Q You mean you verbally question during the
22 sales -- during the training session you question the

1 sales contractors?

2 A Can you repeat that again.

3 Q Sorry. Let me clarify.

4 You mean that by "quiz" you verbally

5 question the sales agent during the sales -- during

6 the training presentation; is that true?

7 A It's not just quizzing. It's watching them

8 actually do a presentation -- a mock presentation.

9 So we watch how they interact.

10 Q I'm sorry. You observe them actually --

11 A Not in the field. In the office.

12 Q In the office?

13 A And we watch how they would present to a

14 customer.

15 Q Okay. Is the extent of training in your

16 office similar to that in the Loop office explained

17 by Mr. Hames?

18 A Yes, it does take place over a number of

19 days. I'm not exactly privy to Mr. Hames' style or

20 what have you, but it is the same, similar process.

21 Q Okay. So would you agree that it consists

22 of 24-hour in-class sessions on two subsequent or

1 sequential days and then some in-field training?

2 A Actually three. We do three.

3 Q Okay. Three -- that would be three --

4 A Three days --

5 Q -- three classroom days?

6 A -- three classroom days of approximately

7 four hours apiece.

8 Q And then agents are also given some time to

9 review the written material; right?

10 A Absolutely.

11 Q And you, yourself, don't conduct the

12 in-field training, though, do you?

13 A No.

14 Q And there's no minimum amount of field

15 training required; is that true?

16 A I'm sorry?

17 Q There's no minimum amount of field training

18 required before an agent goes out to market; is that

19 true?

20 A There is a minimum.

21 Q There is.

22 And what would that be?

1 A Yes. Before they can interact with their
2 first customer they not only have to go through their
3 three days of classroom training, but they have to
4 observe job shadow training for a full -- an
5 additional day.

6 Q And that's the policy in your office?

7 A That's correct.

8 Q So that's not a policy that the EMSC has
9 prescribed to you, that's something that you've
10 chosen to do on your own; is that right?

11 A I can only speak to my office.

12 Q So the question is, does ESMC have a
13 prescribed training methodology that you are supposed
14 to follow or are you allowed some freedom in the way
15 you choose to train your marketers?

16 A There is a prescribed training manual and
17 actually a series of training manuals for Day 1 and
18 Day 2 that is prescribed by the Company that is given
19 to, what I'm aware of, all the regional offices. And
20 from there, any additional training is handled at the
21 discretion of the regional.

22 Q Okay. So the training methodology, how you

1 instruct the agents, is up to you, but the content of
2 the material that you cover is prescribed by the
3 training materials from Corporate; is that right?

4 A Please rephrase that question. If you
5 wouldn't mind, repeat the question.

6 Q Sure.

7 You indicated that the ESMC, I assume,
8 provides you with the training materials that you're
9 to use in these sales presentations; is that right?

10 A Yes.

11 Q Yet the ESMC does not direct you to conduct
12 three days worth of four-hour training sessions, per
13 se, though that is up to your judgment; is that
14 right?

15 A Not entirely. Let me clarify. Day 1 and
16 Day 2 are prescribed by the Company. They are
17 written and we are trained on how to administer Day 1
18 and Day 2.

19 Q Okay. And you have crew coordinators that
20 work with you in your office; is that true?

21 A Yes.

22 Q About how many crew coordinators work for

1 you?

2 A I have currently eight.

3 Q And about how many contractors or sales

4 agents do they -- are in each group of eight crew

5 coordinators?

6 A It varies by group. It varies by crew

7 coordinator. Some have been around longer than

8 others and have, you know, had the opportunity to

9 training more people. But overall the team is

10 approximately around 40 people currently.

11 Q I'm confused.

12 40 people total?

13 A Yes.

14 Q And out of those 40, how many are crew

15 coordinators?

16 A 8.

17 Q Oh, right. Sorry.

18 And the crew coordinators determine

19 the areas where marketing will occur; is that right?

20 A They can, yes.

21 Q By "can," do you mean it's -- withdraw

22 that.

1 It's at crew coordinators' discretion
2 where they take their individual group of sales
3 contractors to market; is that true?

4 A It's -- yes, they can choose the area.

5 Q Okay. Do they communicate the areas where
6 they intend to take their group before they actually
7 go out to market?

8 A Yes.

9 Q And "they" is crew coordinators; that is
10 correct?

11 A Yes.

12 Q Do you in any way communicate that
13 information, that is, where the crew coordinators
14 intend to take the sales agents under them to the
15 Corporate office?

16 A A weekly e-mail is sent of areas that they
17 may market in.

18 Q And how do you know areas they may market
19 in?

20 A Basically, when it's communicated where
21 they would like to market, they have to, you know,
22 put that up to me, you know, and basically this is

1 where they would -- they choose to market. It
2 doesn't necessarily say they will market there.

3 Q And do you know how group coordinators
4 determine where they're going to market?

5 A A lot of times it's just, you know, where
6 people live and where people come from. It's...

7 Q And I'm sorry. Where who lives? The crew
8 coordinators? Or the sale agents?

9 A Sometimes the crew. Yeah, sometimes the
10 crew. It's just convenience, things like that.

11 Q I guess I'm confused because that would
12 presume -- so let me clarify.

13 The crew coordinators choose areas in
14 which they reside and they have their sales agents
15 that are under them come to those areas; is that how
16 it works?

17 A Sometimes.

18 Q And sometimes the sales agents market in
19 the areas where they live under the crew
20 coordinator's supervision; is that right?

21 A They are independent contractors and have a
22 certain amount of freedom to market where they'd

1 like. They report to a crew coordinator and let them
2 know where they're marketing and things like that.

3 Q As part of your duties and managing the --
4 sorry -- the Westmont sales office is to review
5 complaints from U.S. Energy customers that are
6 forwarded to you from the Corporate and Customer
7 Relations Group; is that fair?

8 A That's correct.

9 Q And I'll refer to Corporate and Customers
10 Relations Group as CCR for convenience. Is that
11 okay?

12 A Yes.

13 Q And, in fact, you testify that you
14 communicate daily with head office; right?

15 A I do communicate with head office, yes.

16 Q And by "head office," what do you mean? Do
17 you mean the CCR Department?

18 A No, I mean the entire head office. Like,
19 there's many different departments that I deal with
20 on a day-to-day basis.

21 Q So that consists of different conversations
22 or is it a conference call to several different

1 members in Ontario?

2 A It can be either.

3 Q But these communications happen on a daily
4 basis?

5 A They happen often regularly. I would say
6 that they happen all the time. I would go so far as
7 to say daily, yes. If there was a day or two that a
8 phone call wasn't made, that can happen at times; but
9 it's quite frequent.

10 Q And in some of these conversations that you
11 have with, say, for example, the CCR Department, you
12 discuss information regarding allegations against
13 sales contractors from your office; is that correct?

14 A Yes.

15 Q You believe that many of the allegations
16 that are lodged against particular sales agents are
17 actually not valid. Is that your belief?

18 A I wouldn't say that that's my sweeping
19 belief. I think every allegation needs to be
20 investigated.

21 MS. SODERNA: Sorry. If you just give me one
22 moment.

1 BY MS. SODERNA:

2 Q You testified that it is relatively rare
3 that you receive evidence of wrongdoing. Do you
4 recall that testimony?

5 A I don't recall the exact verbiage of the
6 testimony.

7 Q Do you have it in front of you?

8 A I do not.

9 MR. McMANAMAN: I'm sorry. It's my fault.

10 BY MS. SODERNA:

11 Q It's on Page 6 at Line 121 and 122.

12 A I do recall it, yes.

13 Q Is that still your testimony?

14 A Yes, it is.

15 Q Now, is it your understanding that the CCR
16 Department, in fact, has something of a process in
17 place to investigate allegations against sales
18 contractors and their investigation then results in a
19 conclusion of either validity of the allegation or
20 invalidity of the allegation. Is that your
21 understanding of the CCR's position?

22 A I am not privy to the exact process. But I

1 am aware there is a process in place, which is...

2 Q And the result of that process is that an
3 allegation will be determined to be either valid or
4 not valid; is that true?

5 A That is true.

6 Q And if an allegation is determined to be
7 valid, the Company will impose consequences on those
8 contractors; is that right?

9 A They can do that, yes.

10 Q And Mr. Hames testified that he's aware
11 of at least the allegations in the form of the
12 allegation letters. Do you receive those letters,
13 too?

14 A Yes, I do.

15 Q And so you know whether or not there's been
16 an allegation against a particular sales contractor.
17 Do you find out what the result of that allegation
18 is, that is, what the Company's investigation
19 revealed about that allegation?

20 A Yes.

21 Q So if an allegation's determined to be
22 valid, you would find out about that; right?

1 A Yes, I would.

2 Q And if the Company determines -- the CCR
3 Department, that is, determined that a consequence
4 was appropriate for a particular valid allegation,
5 would you impose that consequence or would the CCR
6 Department?

7 A Please define "impose the consequence."

8 Q Well, let's talk about -- what types of
9 consequences, in your experience, have you seen the
10 CCR Department impose or request in those letters?

11 A If they were to do a monetary consequence,
12 they would impose it and I would administer it.

13 Q So you would -- that's technically -- or
14 not technically colloquially referred to as a
15 clawback; is that right? Clawback of commissions?

16 A That is separate.

17 Q That's different. Okay. I'm sorry.

18 So this would be more like a fine or a
19 penalty; is that right?

20 A Yes.

21 Q Okay. So if it's, like, a \$25 fine, for
22 example, you would withhold that from the commission

1 check. Is that how it works?

2 A No, that is handled by head office.

3 Q So how would you impose a monetary penalty
4 upon a sales contractor?

5 A I cannot impose the penalty. That comes
6 from CCR. I'm the one who has to sit down with the
7 contractor themselves and notify them and, you know,
8 let them know the outcome of the investigation.

9 Q Okay. And if additional coaching or other
10 training is advised by the CCR Department, you would
11 conduct that additional training; is that correct?

12 A Absolutely.

13 Q And I discussed with Mr. Hames the
14 Company's -- or that is, the CCR Department's
15 compliance database where they record the allegations
16 and the results of the investigations of the
17 allegations. Are you familiar with that database?

18 A I am not.

19 Q Are you familiar that there is a database
20 that they record this information at all?

21 A I am not aware of any database. All I'm
22 aware of is what is given to me by CCR.

1 Q Okay. And what's given to you are the
2 allegation summary sheets and the letters regarding
3 the individual allegations; is that right?

4 A That's correct.

5 Q So CCR generates those somehow. You're not
6 really sure how, but they generate those forms and
7 send them to you; is that right?

8 A Yes.

9 Q Did you review Miss Barbara Alexander's
10 surrebuttal testimony in preparation for testifying
11 today?

12 A I did not.

13 Q Do you recall when you were a sales agent
14 if the Company determined that there were any valid
15 allegations regarding your sales efforts?

16 A I do not recall any.

17 MS. SODERNA: I'd like to introduce CUB
18 Cross-Exhibit 5, which I believe is considered
19 confidential by the Company. So I don't want to
20 tread on any dangerous waters here. And the reason I
21 believe you consider this confidential -- we'll have
22 to go in camera unfortunately.

1 (Whereupon, CUB Cross-Exhibit
2 No. 5C was marked for
3 identification.)
4 (Whereupon, the following
5 proceedings were had of a
6 confidential nature and were
7 had in camera.)
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